

IN THE BOMBAY CITY CIVIL COURT AT BOMBAY

S.C. Suit No.3894 of 2013

Mohd. Saeed s/o. Mohd. Hanif

Sayed

..Plaintiff

V/s.

Sayed Mohd.Tamim Abdul Subhan

& Ors.

..Defendants

Coram : His Honour Judge

Shri S.D.DARNE

Dated : 25th March,2015

(C.R. No.1)

Advocate Mr.SS Redekar for plaintiff.

Advocate Mr.Parvinder Singh for defendant no.1.

Order on preliminary issue:

Plaintiff filed this suit for declaration and possession claiming that he is entitled to 1/2 share of the premises allotted or to be allotted to the defendant no.1 after development under SRA Scheme. He also prayed for the injunction. The defendants after appearance in reply to the Notice of Motion taken out for interim injunction, raised the objection as to jurisdiction of this court under Section 9A of CPC. Following the mandate of the said provision, this court has framed the following issue:

"Whether this court has no jurisdiction to try the suit in view of the provisions under Section 42 of the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act,1971?"

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I heard ld.counsel for the defendant who raised the objection

to the jurisdiction of this court as well as ld.advocate for the plaintiff and reply. Ld.advocate for the defendant submitted that the property is developed under SRA Scheme and prior to that there was survey of the slum dwellers. List of such slum dwellers was accordingly prepared and in the said list this defendant no.1 is at sr.no.14 but the plaintiff's name is also there at sr.no.15. It is submitted that the allotment order or letters are also received by the defendant but the plaintiff is asking for 1/2 share in the premises allotted to him by filing this suit when Section 42 of the Act bar such suit. He submitted that he can approach the competent authority for the appropriate relief and thus what could be adjudged or decided by the authority cannot be decided by this court of ordinary jurisdiction.

3 In reply, ld.counsel for the plaintiff submitted that his claim is against the defendant to enforce the right based on his earlier declaration or such other instrument wherein he acknowledged the right of the plaintiff in the said premises. Thus it is purely suit to enforce private right or resolve the dispute which is outside the purview of Section 42 of the Act. He cited a judgment of Hon'ble High Court in **Ashok B. Nigudkar V/s. Sudhadra P. Nirgudkar and others**, 2013(4)Mh.L.J.175 to support his contention that suit is maintainable. According to him, in similar circumstances, Hon'ble High Court held that such type of suits are maintainable.

4 As submitted, this suit is for declaration, possession and injunction and as pleaded, it based upon the alleged declaration cum no objection allegedly made by the defendant. The prayers clause (a), (b) and (c) are as under:

- "(a) This Hon'ble Court be pleased to declare that the writing executed by the Def.No.1. i.e. Declaration Cum NOC dt. 10.10.2007 at Exhibit 'A' to the plaint is valid, in force & binding upon the Defendant No.1.
- (b) This Hon'ble Court be pleased to declare that the Plaintiff is having equal right, title & interest in respect of the old premises viz. Room No.156-3/4, Aman Nagar, A-Block, Dr.A.B.Road, Worli, Mumbai 18 & Plaintiff is entitled for joint allotment/possession of new premises along with the Def.No.1 from the Def.Nos.2 & 3.
- (c) This Hon'ble Court be pleased to pass permanent order of injunction against the Def.Nos.2 & 3 restraining them, their agents, servants from allotting permanent alternate accommodation to the Deft.No.1 exclusively in lieu of old premises viz. Room No.156-3/4, Aman Nagar, A-Block, Dr.A.B. Road, Worli, Mumbai 18."

5 SRA was impleaded as defendant no.4 in this suit but later on it is deleted. At this stage, I need not go into the merits of the case or say whether plaintiff is justified claiming such relief on the basis of alleged such declaration and document or they are valid or binding on the defendant etc. It is simply to be seen whether dispute raised in this suit could be adjudged and the relief sought could be granted if proved by this court or there is bar under Section 42 of the Act. Section 42 of the Act is as under:

Bar of jurisdiction- Save as otherwise expressly provided in this Act, no Civil Court shall have jurisdiction in respect of any matter which the (appellate Authority, Competent Authority, Grievance redressal Committee) or Tribunal is empowered by or under this Act, to determine and no injunction shall be granted by any Court or other

authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

6 Thus, under this provisions, Civil Court has no jurisdiction in respect of any matter which the authorities under the Act is empowered to determine such matter. Hon'ble High Court in Ashok Nigudkar's case adverting to the observation of the Apex Court in *Rajasthan State Road Transport Corporation and anr. V/s. Bal Mukund Bairwa* (2009) 4 SCC 299 observed that the litigant having grievance of a civil nature has a right to institute a civil suit in a competent Civil Court unless its cognizance is either expressly or impliedly barred by any statute. It is further observed that the dispute inter se between two claimants claiming to be legal heirs of deceased by no stretch of imagination falls within the scope of powers of the Competent Authority or the appellate authority. In this case, the plaintiff is not asking the independent premises to be allotted to him or to include his name in the list or like that. As I have already stated, he is seeking possession rather joint possession with the defendant no.1 in the premises allotted to him on the basis of earlier declaration the defendant made in his favour. In this suit, the court will have to decide and adjudicate whether plaintiff has got such right based on certain document to share the premises allotted to the defendant under SRA scheme. Thus, in my opinion, it is purely civil dispute between plaintiff and defendant no.1. By no stretch of imagination any authority under the Act can adjudge or have power to determine such issues or dispute and when I say that the authorities under the Act cannot determine at such dispute, this court of ordinary civil jurisdiction will have to entertain the cause and adjudge according to law. Hence, I pass following order:

ORDER

This court has jurisdiction and I decide the preliminary issue accordingly in the negative.

25/03/2015

(S.D.DARNE)
Judge,
City Civil Court, Gr.Mumbai

Dictated on : 25/03/2015
Transcribed on : 26/03/2015
Signed by HHJ on :26/03/2015